



**Minnesota State Colleges and Universities  
System Procedures  
Chapter 5 – Administration  
Procedures associated with Board Policy 5.14**

**5.14.2 Consultant, Professional or Technical Services and Income Contracts**

**Part 1. Authority**

Board Policy 5.14 Procurement and Contracts delegates to the chancellor authority to develop procedures on behalf of the board for entering into consultant, professional, or technical services contracts.

**Part 2. Contracting Authority**

Colleges and universities have authority to enter into individual contracts with a value of up to and including \$100,000 without vice chancellor-chief financial officer approval.

Contracts over \$100,000 require approval from the vice chancellor-chief financial officer. College and universities shall submit a memorandum explaining the need for the contract, the proposed process to be used in selecting a contractor, and estimated cost, and shall verify that funds are available for paying the contractor. The vice chancellor-chief financial officer will review the memorandum and respond in writing to the college or university.

Contracts requiring vice chancellor-chief financial officer approval include consecutive single-year contracts with the same entity and contracts with amendments which, when added together, exceed \$100,000.

Contracts of any value with a term in excess of five years require approval by the vice chancellor-chief financial officer.

Each college and university shall develop procedures for entering into contracts in consultation with the system office. Employees and their exclusive bargaining representatives shall also be consulted on the proposed procedures and must address topics such as employee protection, information availability and reporting, conflict of interest, and renewal restrictions.

**Part 3. Contract Preparation**

Contracts must be prepared on forms approved by the system office to assure that they include all state-required contract language. Any modification of forms approved by the system office or the use of a non-system office form requires the review by system legal counsel and approval of the vice chancellor-chief financial officer. System legal counsel includes either the Minnesota State Colleges and Universities General Counsel or the Minnesota Attorney General's Office.

#### **Part 4. Encumbrance**

Funds must be encumbered prior to making an obligation. An authorized employee shall certify that the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it. College, university, and system office administration must assure proper authorization is on file for employees charged with encumbering funds. An expenditure or obligation authorized or incurred prior to encumbering funds is in violation of state law and ineligible for payment until made valid and is in violation of Minn. Stat. § 16A15, Subd. 3. An employee authorizing or making the payment, or taking part in it, may be liable to the State for the amount paid. A knowing violation of Minn. Stat. § 16A.15, Subd. 3, is just cause for the employee's removal. The State cannot agree to indemnify third parties or hold them harmless (Minn. Stat. § 16A.138; Minn. Const. Art. XI, Sec. 1).

#### **Part 5. Prepayment**

Minn. Stat. § 16A.41, Subd. 1, generally prohibits the system office and the colleges and universities from paying in advance, except under the circumstances described in Minn. Stat. § 16A.065.

#### **Part 6. Consultant, Professional, or Technical Services Contract Definition**

A consultant, professional, or technical contract means any agreement entered into for consultant, professional, or technical services usually on a short-term basis for a finite period of time and for one or more specific purpose. They are predominantly intellectual in character, which could include consultation analysis, evaluation, prediction, planning, or recommendation; do not involve the provisions of supplies or materials; and result in the production of a report or the completion of a task.

##### **Subpart A. Contracts shall generally not exceed five years**

Contracts must show any renewal information including the amount previously paid. Any contract or amendments to original contracts that a campus or the system office proposes to continue beyond five years shall be reviewed and approved by the vice chancellor-chief financial officer.

##### **Subpart B. Public solicitation**

For contracts anticipated to exceed \$50,000 in total, sealed bids must be solicited by public notice through publishing a minimum two week notice on a State of Minnesota website or in one or more official newspaper. The official newspaper may be the State Register. In addition to the public notice, requests for proposals may be solicited by directly notifying prospective bidders not less than seven (7) days before the final date of submitting bids.

For proposed single-source contracts over \$50,000, the request form for a single-source exception must be completed.

#### **Part 7. Contracts in Excess of \$100,000**

Contracts over \$100,000 require system office approval from the vice chancellor-chief financial officer. The college or university shall submit a memorandum explaining the need for the contractor, the proposed process to be used in selecting a contractor, and estimated cost, and

shall verify that funds are available for paying the contractor. The vice chancellor-chief financial officer will review the memorandum and respond in writing to the college or university.

Contracts requiring vice chancellor-chief financial officer approval include consecutive single-year contracts with the same entity and contracts with amendments which, when added together, exceed \$100,000.

Contracts with a term in excess of five (5) years require approval by the vice chancellor-chief financial officer.

**Subpart A. Businesses with more than 40 employees within Minnesota**

Consistent with Minn. Stat. § 363A.36, vendors who intend to bid on any purchases or contracts exceeding \$100,000 and have had on any single working day in the previous twelve (12) months more than forty (40) full-time employees within Minnesota, shall apply for a Certificate of Compliance from the Minnesota Department of Human Rights. Bids or proposals on purchases or contracts exceeding \$100,000 from vendors who have not applied for this certificate must not be accepted. An award exceeding \$100,000 must not be made to vendors who have not obtained this certificate.

**Subpart B. Businesses with more than 40 employees outside Minnesota**

Consistent with Minn. Stat. § 363A.36, vendors who do not have more than forty (40) full-time employees in Minnesota, but who have had on any single working day in the previous twelve (12) months more than forty (40) full-time employees in the state in which their principal place of business is located, shall have a Minnesota Certificate of Compliance or shall certify that the business is in compliance with federal affirmative action requirements in order to receive a contract award exceeding \$100,000.

**Part 8. Contracting with Targeted Group Businesses**

Targeted group businesses are those meeting the definition in Minn. Stat. § 16C.16, Subd.5. Purchasing practices will include provisions whenever practicable, for procurement from small targeted group businesses as defined in Minn. Stat. § 471.345, Subd. 8. Targeted businesses are certified as such and a list is available from the Department of Administration.

**Part 9. Income Contracts including Customized Training and Grants**

Colleges, universities, and the system office may enter into income contracts, including grant agreements other than federal grants or grants from Minnesota state agencies, contracts to provide customized training instruction, or otherwise generate income without additional authorization from the board if such contracts or agreements do not exceed \$3,000,000.

Colleges, universities, and the system office shall consult with the vice chancellor-chief financial officer prior to executing an income contract exceeding \$1,000,000 or five years. Consultation shall also occur prior to execution of any income contract that concerns uses in general obligation or revenue fund bond financed property.

Federal grants or grants from Minnesota state agencies do not require prior approval by the board or consultation with the vice chancellor-chief financial officer.

## **Part 10. Intra-Agency and Inter-Agency Agreements, Joint Powers Agreements, and Master Contracts**

Colleges and universities and the system office may enter into intra-agency, inter-agency, joint powers agreements that do not create a joint powers board, Minnesota Department of Administration master contracts, MN.IT Services master contracts, or Minnesota State Colleges and Universities master contracts without additional authorization from the board if such contracts or agreements do not exceed \$3,000,000.

Contracts in this category with a total value in excess of \$1,000,000 or with a term in excess of five years require approval by the vice chancellor-chief financial officer.

## **Part 11. Restrictions**

### **Subpart A. Contracts with law firms or lawyers**

Only system legal counsel has the authority to represent the State. Colleges, universities, and the system office may enter into contracts with a law firm or a lawyer for non-legal services subject to the review by system legal counsel and the approval of the vice chancellor-chief financial officer and system legal counsel. The following language must be included in any contract entered into with a law firm or a lawyer for non-legal services: “Contractor’s duties do not include providing legal services to the State within the meaning of Minn. Stat. § 8.06.”

### **Subpart B. Contracts for banking services and banking-related services**

Minn. Stat. § 16A.27 gives to the commissioner of Minnesota Management and Budget the authority to “control the amount and manner of deposit of state funds.” The system office, colleges, and universities must work with Minnesota Management and Budget when seeking any services related to the handling of state funds, banking, or banking services. The vice chancellor-chief financial officer should be consulted prior to execution of any banking services contracts. The system office and the colleges and universities should re-bid bank services at least every five years.

### **Subpart C. Contracts for audits with a public accountant**

Minn. Stat. § 3.972, Subd. 3, places a restriction on contracting with public accountants for audits. It requires that “a contract shall not be negotiated unless the contract has been reviewed by the legislative auditor.” Board Policy 1A.2 requires board approval of audit firm contracts under certain circumstances. Colleges and universities shall consult with the vice chancellor – chief financial officer prior to the execution of any contract with any audit firm.

### **Subpart D. Employer-employee relationship**

A contract shall not establish an employer-employee relationship as defined in Internal Revenue Service rules.

## **Part 12. Code of Ethics**

All system employees engaged in contracting and purchasing are subject to Minnesota law applicable to state employees, including Minn. Stat. §§. 15.43, 43A.38, 43A.39 and System Procedure 1C.01.

### **Part 13. Accountability**

The chancellor for the system office and the president of each college and university shall designate an employee who shall have overall responsibility for complying with state and federal laws, board policy, bargaining agreements, and system-wide procedures for all consultant, professional, and technical contracts.

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*Date and Subject of Amendment:*

*5/17/16 - Amended title to include income contracts. Amended to comply with policy requirements in Policy 5.14. Amended Part 5 to prohibit pre-payments except allowable in Minn. Stat. § 16A.065. Amended Part 6, Subpart B to require single source exception form. Amended Part 9 to require consultation with the vice chancellor-chief financial officer prior to executing an income contract exceeding \$1,000,000 or five years and contracts of any value involving bond financed property. Other formatting changes throughout for consistency with other policy and procedures.*